

Detroit Free Press

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160 W. Fort Street, Detroit, MI 48226 | phone: 313-749-9979 | fax: 313-496-5445 | hfink@freepress.com

Herschel Fink
Legal Counsel

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Law and Justice Committee
Michigan House of Representatives
P.O. Box 30014
Lansing, MI 48909-7514

By Email: agill@house.mi.gov

Re: Detroit Free Press Support H.B. No. 4766

Dear Committee Members:

I am currently away from my office, but I write by email to express the strong support of my clients, Detroit Free Press, and its five Michigan sister publications in the USAToday Network (The Lansing State Journal, Battle Creek Enquirer, Port Huron Times Herald, Livingston Today, and the Observer and Eccentric) for **House Bill No. 4766**.

The essential purpose of the Open Meetings Act, along with its companion statute, the Freedom of Information Act, is to make government accountable to the People. As Sixth Circuit U.S. Court of Appeals Judge Damon Keith famously wrote of closed deportation administrative proceedings in a case that I was privileged to litigate for the Free Press, "Democracy dies behind closed doors." (*Detroit Free Press v. Ashcroft*, 303 F.3d 681 (2002)).

If the People cannot witness their representatives conducting the People's business, then democracy becomes a hollow promise. "Sunshine" laws, such as OMA and FOIA, inform the People so that they may hold government accountable. The attorney fee shifting provisions of OMA and the Freedom of Information Act ensure that ordinary citizens have access to the courts to enforce these essential laws. Recent interpretations of the Open Meetings Act by our Supreme Court and Court of Appeals, however, have undercut the enforcement mechanisms of the OMA, or, at best, left them in doubt.

House Bill 4766 restores those enforcement mechanisms, and provides badly needed clarity and certainty to OMA.

Rather than burden this committee with an additional legal explanation, I simply endorse and adopt the discussion in a letter to this committee dated today by my former colleague, Paul McAdoo, now of the Aaron Sander firm in Nashville. Mr. McAdoo, as his letter explains, was my co-counsel in recent Open Meetings Act litigation against the University of Michigan Board of Regents over

its exclusion of the public at meetings where it deliberates on public policy and the expenditure of billions of taxpayer dollars.

The public's exclusion from public university governing board meetings where public policy is deliberated, and the need for a constitutional amendment to clarify the public's essential right to attend, has been a topic about which I have previously addressed committees of the House on behalf of the Free Press. The House in past sessions has previously proposed such a constitutional amendment, and my clients hope that it will do so again, in light of the recent Michigan Supreme Court decision in *Detroit Free Press v. Regents of the University of Michigan*, which Mr. McAdoo references in his letter.

That suggestion I leave for another day. Now, this Committee can strengthen governmental accountability by taking action in favor of H.B. No. 4766.

Very truly yours,

s//s

Herschel P. Fink
Legal Counsel